

## Internal Revenue Service

Number: **201149012**

Release Date: 12/9/2011

Index Number: 332.00-00, 355.01-00,  
355.01-01, 368.04-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

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CC:CORP:B05

PLR-112866-11

Date:

September 09, 2011

### LEGEND:

Distributing 1 =

Distributing 2 =

Distributing 3 =

Distributing 4 =

Distributing 5 =

Controlled 1 =

Controlled 2 =

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Controlled 3 =

Controlled 4 =

Controlled 5 =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

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Sub 6 =

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FSub 24 =

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Business B =

Business C =

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FSub 23 Active  
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FSub 24 Active  
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State G =

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State I =

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Dear :

This letter responds to your March 23, 2011, letter requesting rulings on certain federal income tax consequences of the Proposed Transactions (defined below). The material information provided in that letter and in subsequent correspondence is summarized below.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination. Moreover, this office has not reviewed any information pertaining to, and has made no determination regarding, whether any distribution occurring as part of the Proposed Transactions and for which qualification under section 355 of the Internal Revenue Code (the "Code") is sought will (i) satisfy the business purpose requirement of Treas. Reg. § 1.355-2(b), (ii) be used principally as a device for the distribution of the

earnings and profits of the distributing corporation or the controlled corporation or both (see section 355(a)(1)(B) and Treas. Reg. § 1.355-2(d)), or (iii) be part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation (see section 355(e) and Treas. Reg. § 1.355-7).

### SUMMARY OF FACTS

Distributing 5, a State A corporation, is the common parent of a group of domestic and foreign corporations the includible affiliates of which join in filing a consolidated Federal income tax return (the “Distributing 5 Group”). The Distributing 5 Group engages in Business A, Business B, and Business C. Distributing 5 has outstanding one class of common stock, which is widely held and publicly traded (“Distributing 5 Common Stock”). Based on public filings with the Securities and Exchange Commission, Distributing 5 believes that only one stockholder, Stockholder 1, owns more than 5 percent of its stock. Stockholder 1 and the other stockholders of Distributing 5 Common Stock are referred to as the “Distributing 5 Stockholders.” Certain employees of Distributing 5 hold Distributing 5 Common Stock subject to vesting issued to them in connection with the performance of services (the “Distributing 5 Restricted Stock”). For purposes of this letter, the term “Restricted Stock” means stock granted to employees subject to vesting.

Distributing 5 wholly owns the following entities: (i) Distributing 4, a State B holding company, (ii) Sub 1, a State B corporation engaged in Business B, (iii) Sub 2, a State B holding company, (iv) Sub 3, a State B corporation that owns certain intellectual property assets used in all three businesses, (v) Sub 4, a State C corporation engaged in Business A, (vi) FSub 1, a Country 1 entity treated as a corporation for Federal tax purposes and engaged in Business A, (vii) Sub 5, a State D corporation engaged in Business A, (viii) Sub 6, a State B corporation engaged in Business A, (ix) Sub 7, a State E corporation engaged in Business A, (x) Sub 8, a State B corporation engaged in Business A, (xi) Sub 9, a State F corporation engaged in Business A, (xii) Sub 10, a State B corporation engaged in Business B, (xiii) Sub 11, a State B corporation engaged in Business B, (xiv) FSub 2, a Country 2 entity treated as a corporation for Federal tax purposes and engaged in Business B, (xv) Sub 12, a State G corporation engaged in Business B, (xvi) Sub 13, a State B corporation engaged in Business B, (xvii) Sub 14, a State H corporation engaged in Business B, (xviii) Sub 15, a State B limited liability company (“LLC”) treated as an entity disregarded from its owner for Federal tax purposes (each such entity, a “disregarded entity”) and engaged in Business B, (xix) Sub 52, a State B corporation engaged in Business B, (xx) Sub 16, a State D corporation engaged in Business B, (xxi) FSub 4, a Country 4 entity treated as a corporation for Federal tax purposes and engaged in Business B, (xxii) Sub 17, a State B LLC treated as a corporation for Federal tax purposes and engaged in Business B, (xxiii) Sub 18, a State B holding company with direct and indirect subsidiaries

engaged in either Business A or Business B, (xxiv) Sub 19, a State B LLC treated as a disregarded entity and engaged in Business B, (xxv) Sub 20, a State B corporation engaged in Business B, (xxvi) Sub 21, a State B corporation engaged in Business B, (xxvii) Sub 22, a State B corporation engaged in Business B, (xxviii) Sub 23, a State B corporation engaged in Business B, (xxix) Sub 24, a State I corporation engaged in Business B, (xxx) Sub 25, a State B corporation engaged in Business C, (xxxi) Sub 26, a State F corporation engaged in Business C, (xxxii) Sub 27, a State I corporation engaged in Business C, (xxxiii) Sub 28, a State B corporation engaged in Business C, (xxxiv) Sub 29, a State B corporation engaged in Business C, (xxxv) Sub 30, a State B corporation engaged in Business C, (xxxvi) Sub 31, a State B LLC treated as a disregarded entity and engaged in Business C, and (xxxvii) FSub 5, a Country 5 entity treated as a corporation for Federal tax purposes and engaged in Business C.

Distributing 5 also owns a percent of Sub 32, a State B corporation engaged in Business B, and b percent of Sub 33, a State J corporation engaged in Business C. Sub 21 owns the remaining a percent of Sub 32, and third parties own the remaining t percent of Sub 33. Sub 32 has certain subsidiaries involved in Business A (the “Sub 32 Business A Subsidiaries”).

Sub 4, FSub 1, Sub 5, Sub 6, Sub 7, and Sub 8 are collectively referred to as the “First-Tier Business A Subsidiaries.” Sub 10, Sub 11, FSub 2, Sub 12, Sub 13, Sub 14, Sub 15, Sub 52, Sub 16, FSub 4, Sub 17, Sub 18, Sub 19, Sub 20, Sub 21, Sub 22, Sub 23, Sub 24, and Sub 32 are collectively referred to as the “First-Tier Business B Subsidiaries.” Sub 25, Sub 26, Sub 27, Sub 28, Sub 29, Sub 30, Sub 31, FSub 5, and Sub 33 are collectively referred to as the “First-Tier Business C Subsidiaries.”

Distributing 4 has only one class of stock outstanding (“Distributing 4 Common Stock”). Distributing 4 wholly owns Sub 34, a State B corporation engaged in Business A. Sub 34 wholly owns Sub 35, a State B holding company and owns c percent of the equity interests of FSub 6, a Country 6 entity treated as a corporation for Federal tax purposes and engaged in Business A. Sub 35 owns c percent of the equity of Sub 36, a State B limited partnership treated as a partnership for Federal tax purposes and engaged in Business A. Sub 34 owns the remaining d percent of Sub 36.

Sub 1 wholly owns Sub 37, a State B corporation engaged in Business A. Sub 37 owns the following interests: (i) all of the equity interests in FSub 7, a Country 7 entity treated as a corporation for Federal tax purposes, (ii) all of the equity interests in FSub 8, a Country 4 entity treated as a corporation for Federal tax purposes, (iii) all of the equity interests in Sub 38, a State B LLC treated as a disregarded entity, (iv) all of the equity interests in Sub 39, a State B LLC treated as a disregarded entity, (v) all the stock of Sub 40, a State B corporation, (vi) all of the equity interests in FSub 9, a Country 8 entity treated as a corporation for Federal tax purposes, (vii) b percent of the equity interests in FSub 10, a Country 6 entity treated as a corporation for Federal tax purposes, (viii) e percent of the equity interests in FSub 11, a Country 9 entity treated as a corporation for Federal tax purposes, (ix) c percent of the equity interests in FSub 12,

a Country 10 entity treated as a corporation for Federal tax purposes, (x) c percent of the equity interests in FSub 13, a Country 11 entity treated as a corporation for Federal tax purposes, (xi) b percent of the equity interests in FSub 14, a Country 12 entity treated as a corporation for Federal tax purposes, and (xii) f percent of the equity interests in FSub 15, a Country 13 entity treated as a corporation for Federal tax purposes (these subsidiaries of Sub 37 collectively, the “Sub 37 Subsidiaries”). FSub 21 and FSub 24 (each as described below) own the remaining equity interests in the Sub 37 Subsidiaries. All of the Sub 37 Subsidiaries conduct only Business A except for FSub 12, which also engages in Business B.

Sub 2 wholly owns Sub 41, a State B holding company.

Sub 4 wholly owns (i) Sub 42, a State K corporation, (ii) Sub 43, a State F corporation, (iii) Sub 44, a State B corporation, and (iv) Sub 45, a State B corporation. These Sub 4 subsidiaries are all engaged in Business A.

Sub 8 wholly owns Sub 46, a State D corporation engaged in Business A.

Sub 18 wholly owns Sub 47, a State B corporation that conducts Business B. Sub 47 wholly owns FSub 16, a Country 14 entity treated as a corporation for Federal tax purposes and engaged in Business A.

Sub 22 wholly owns Sub 48, a State D corporation engaged in Business A.

Sub 2, Sub 3, Sub 8, Sub 34, and Sub 41 own g percent, h percent, i percent, j percent, and k percent, respectively, of Distributing 3, a State B holding company. Distributing 3 has only one class of stock outstanding (“Distributing 3 Common Stock”). Distributing 3 directly and indirectly owns approximately l foreign subsidiaries (this group of entities, the “Distributing 3 Group”). These subsidiaries engage in all three of the Distributing 5 businesses (the entities engaged in each business, the “Foreign Business A Subsidiaries,” the “Foreign Business B Subsidiaries,” and the “Foreign Business C Subsidiaries”).

Distributing 3 wholly owns (i) Distributing 2, a Country 15 holding company treated as a corporation for Federal tax purposes and (ii) FSub 17, a Country 1 entity treated as a corporation for Federal tax purposes and engaged in Business A. Distributing 2 has authorized capital stock consisting of common stock (“Distributing 2 Common Stock”) and convertible preferred equity certificates (“CPECs,” and as issued by Distributing 2, “Distributing 2 CPECs”). As of Date 1, the Distributing 2 CPECs had an accrued and unpaid yield of €m.

Distributing 2 wholly owns Distributing 1, a Country 15 holding company treated as a corporation for Federal tax purposes. Distributing 1 has authorized capital stock consisting of common stock (“Distributing 1 Common Stock”) and CPECs (as issued by Distributing 1, “Distributing 1 CPECs”). The Distributing 1 CPECs in general have the

same terms as the Distributing 2 CPECs. As of Date 1, the Distributing 1 CPECs had an accrued and unpaid yield of €n.

Distributing 1 owns all of the equity interests in FSub 18, a Country 15 holding company. FSub 18 owns all of the equity interests in FSub 19, a Country 15 holding company. FSub 19 owns all of the equity interests in FSub 20, a Country 16 entity that conducts Business A and Business B, and FSub 21, a Country 17 holding company. Except for Distributing 1, all of these entities are disregarded for Federal tax purposes.

FSub 20 wholly owns, among other entities, (i) FSub 22, a Country 16 entity that directly conducts the FSub 22 Active Business and (ii) FSub 23, a Country 18 entity that directly conducts the FSub 23 Active Business. FSub 21 owns all of the equity interests in FSub 24, a Country 17 entity that directly conducts the FSub 24 Active Business. All of these entities are disregarded as separate from Distributing 1 for Federal tax purposes. The FSub 24 Active Business (which is part of Business A), the FSub 23 Active Business (which is part of Business B), and the FSub 22 Active Business (which is part of Business C) will be relied on to satisfy the active trade or business requirement of section 355(b) for the distributions in the Proposed Transactions seeking qualification under section 355. Financial information has been received indicating that the FSub 24 Active Business, the FSub 23 Active Business, and the FSub 22 Active Business each has had gross receipts and operating expenses representative of the active conduct of a trade or business for each of the past five years.

Business A, Business B, and Business C each represent discrete segments of Distributing 5's overall business, and each segment has historically exhibited different financial and operating characteristics. This has necessitated varying capital expenditure and acquisition strategies for each business and has resulted in operational inefficiencies owing to the conduct of all three businesses within the same affiliated group. The Proposed Transactions are designed to separate the businesses from one another and in doing so enable each business: (i) to design and implement the distinct strategies needed to operate in a more efficient manner, (ii) to better align its management's attention, compensation, and resources with opportunities in its market and more actively manage its cost structure, (iii) to focus solely on the needs of its customers, without dilution arising from a connection to a larger corporate group with tangential goals and incentives, (iv) to structure incentives that reward managers in a manner directly related to the performance of their business unit and provide each business with a more attractive currency for equity-based compensation, and (iv) to use its own stock as acquisition currency and more readily combine with similar pure-play businesses (collectively, the "Corporate Business Purposes").

## THE PROPOSED TRANSACTIONS

To achieve the Corporate Business Purposes, Distributing 5 proposes and has partially undertaken the following series of transactions (the "Proposed Transactions").

(i) The Distributing 5 Group will engage in a series of internal restructuring steps to separate the three business segments now conducted within the Distributing 3 Group (the “Distributing 3 Foreign Restructuring”). The Distributing 3 Foreign Restructuring will primarily involve transactions among disregarded entities and taxable sales for which rulings are not being sought.

(ii) Following the initial steps of the Distributing 3 Foreign Restructuring described above in step (i), FSub 18 will contribute, or cause its subsidiaries to transfer, all of the Foreign Business B Subsidiaries to newly formed Controlled 1, a Country 15 entity treated as a corporation for Federal tax purposes, in exchange for common stock (the “Controlled 1 Common Stock”) and CPECs (the “Controlled 1 CPECs”) (the “Controlled 1 Contribution”). The Controlled 1 CPECs in general will have the same terms as the Distributing 2 CPECs. As part of the Controlled 1 Contribution, Distributing 1 will contribute to Controlled 1 approximately \$g in cash.

(iii) FSub 18 will contribute, or cause its subsidiaries to transfer, all of the Foreign Business C Subsidiaries to newly formed Controlled 2, a Country 15 entity treated as a corporation for Federal tax purposes, in exchange for common stock (the “Controlled 2 Common Stock”) and CPECs (the “Controlled 2 CPECs”) (the “Controlled 2 Contribution,” and together with the Controlled 1 Contribution, the “Country 15 Contributions”). The Controlled 2 CPECs in general will have the same terms as the Distributing 2 CPECs. Before the Country 15 Contributions, Distributing 1 may cause the Foreign Business B Subsidiaries and the Foreign Business C Subsidiaries to be transferred to disregarded entities of Distributing 1 that would then be contributed to Controlled 1 or Controlled 2, as appropriate.

(iv) Following the Country 15 Contributions, FSub 18 will distribute all of the CPECs and Common Stock of Controlled 1 and Controlled 2 to Distributing 1.

At the conclusion of the Distributing 3 Foreign Restructuring described in steps (i)-(iv), Distributing 1 will wholly own three entities: FSub 18, which will own the Foreign Business A Subsidiaries; Controlled 1, which will own the Foreign Business B Subsidiaries; and Controlled 2, which will own the Foreign Business C Subsidiaries.

(v) Distributing 1 will distribute all of the Controlled 1 CPECs and Controlled 1 Common Stock to Distributing 2, in part as a redemption of Distributing 1 CPECs (reflecting face amount and accrued yield) equal in value to the Controlled 1 equity received therefor and in part as a distribution on Distributing 1 Common Stock (together with the Controlled 1 Contribution, “Divisive Reorganization 1”).

(vi) Distributing 1 will distribute all of the Controlled 2 CPECs and Controlled 2 Common Stock to Distributing 2, in part as a redemption of Distributing 1 CPECs (reflecting face amount and accrued yield) equal in value to the Controlled 2



equity received therefor and in part as a distribution on Distributing 1 Common Stock (together with the Controlled 2 Contribution, "Divisive Reorganization 2").

(vii) Following Divisive Reorganization 1, Distributing 2 will distribute all of the Controlled 1 CPECs and Controlled 1 Common Stock to Distributing 3, in part as a redemption of Distributing 2 CPECs (reflecting face amount and accrued yield) equal in value to the Controlled 1 equity received therefor and in part as a distribution on Distributing 2 Common Stock ("Distribution 1").

(viii) Following Divisive Reorganization 2, Distributing 2 will distribute all of the Controlled 2 CPECs and Controlled 2 Common Stock to Distributing 3, in part as a redemption of Distributing 2 CPECs (reflecting face amount and accrued yield) equal in value to Controlled 2 equity received therefor and in part as a distribution on Distributing 2 Common Stock ("Distribution 2").

(ix) Sub 41 will convert under state law into Sub 41 LLC, a State B LLC treated as a disregarded entity of Sub 2 (the "Sub 41 Conversion").

(x) Sub 34 will convert under state law into Sub 34 LLC, a State B LLC treated as a disregarded entity of Distributing 4 (the "Sub 34 Conversion").

(xi) Sub 8 will convert under state law into Sub 8 LLC, a State B LLC treated as a disregarded entity of Distributing 5 (the "Sub 8 Conversion").

(xii) Sub 3 will convert under state law into Sub 3 LLC, a State B LLC treated as a disregarded entity of Distributing 5 (the "Sub 3 Conversion," and together with the Sub 34 LLC Conversion and the Sub 8 Conversion, the "Conversions").

(xiii) Sub 36 will form Sub 49, a State B LLC treated as a disregarded entity of Sub 36, and transfer all of its assets to Sub 49. Sub 35 and Sub 36 will convert under state law from a corporation and a limited partnership, respectively, into State B LLCs (Sub 35 LLC and Sub 36 LLC, respectively) treated as disregarded entities of Distributing 4.

(xiv) Sub 35 LLC will distribute its c-percent interest in Sub 36 LLC to Sub 34 LLC, making Sub 34 LLC the sole owner of Sub 36 LLC.

(xv) Sub 36 LLC will distribute its l-percent interest in Sub 49 to Sub 34 LLC.

(xvi) Sub 34 LLC will distribute its l-percent interest in Sub 36 LLC to Distributing 4.

(xvii) Following the Sub 41 Conversion, Sub 41 LLC will distribute its k percent of the Distributing 3 Common Stock to Sub 2.

(xviii) Following the Sub 34 Conversion, Sub 34 LLC will distribute its j percent of the Distributing 3 Common Stock to Distributing 4.

(xix) Following the Sub 8 Conversion, Sub 8 LLC will distribute its j percent of the Distributing 3 Common Stock, and all the stock of Sub 46, to Distributing 5.

(xx) Following the Sub 3 Conversion, Sub 3 LLC will distribute its h percent of the Distributing 3 Common Stock to Distributing 5.

(xxi) Sub 3 LLC will either distribute its assets used in Business A and Business C to Distributing 5 or contribute the Business A assets and Business C assets to separate LLCs treated as disregarded entities and distribute the interests in these entities to Distributing 5 (the "Sub 3 Asset Distribution").

(xxii) Sub 37 will contribute all of its interests in the Sub 37 Subsidiaries and any other assets used in Business A to a newly formed State B corporation, Sub 50, in exchange for all the stock of Sub 50.

(xxiii) Sub 9 will convert under state law into Sub 9 LLC, a State F LLC treated as a disregarded entity of Distributing 5.

(xxiv) Sub 9 LLC will transfer its assets to a disregarded entity of Controlled 5 in exchange for Controlled 5 Common Stock in a transaction intended to be part of the Controlled 5 Contribution (defined below).

(xxv) Sub 21 will convert under state law into Sub 21 LLC, a State B LLC treated as a disregarded entity of Distributing 5.

(xxvi) Sub 32 will convert under state law into Sub 32 LLC, a State B LLC treated as a disregarded entity of Distributing 5.

(xxvii) Sub 32 LLC will distribute the stock of the Sub 32 Business A Subsidiaries to Distributing 5 and Sub 21 LLC, and Sub 21 LLC will distribute the stock it receives to Distributing 5.

(xxviii) Sub 47 will contribute all the stock of FSub 16 to Sub 51, a newly formed State B corporation wholly owned by Sub 47.

(xxix) Sub 47 will distribute all the stock of Sub 51 to Sub 18.

(xxx) Sub 18 will distribute all the stock of Sub 51 to Distributing 5.

(xxxi) Sub 22 will distribute all the stock of Sub 48 to Distributing 5.

(xxxii) As part of an integrated transaction with steps (xxxiii) through (xxxiv), Sub 2 will contribute its o percent share of the Distributing 3 Common Stock to

Distributing 4 in exchange for Distributing 4 Common Stock (the “Sub 2 Contribution”).

(xxxiii) Distributing 5 will contribute its p percent share of the Distributing 3 Common Stock, its directly owned assets in Business B, all of its interests in the First-Tier Business B Subsidiaries (including Sub 21 LLC and Sub 32 LLC), all of its equity interests in Sub 3 LLC, and all of its equity interests in Sub 9 LLC to Distributing 4 in exchange for Distributing 4 Common Stock and the assumption by Distributing 4 of certain liabilities associated with the contributed assets (the “Distributing 5 Contribution”). Certain Business B divisions directly held by Distributing 5 will not be contributed directly to Distributing 4 in the Distributing 5 Contribution but will instead be contributed to a series of domestic LLCs treated as disregarded entities of Distributing 4 (or will become disregarded entities of Distributing 4 following the Distributing 5 Contribution).

(xxxiv) Sub 37 will contribute all the stock of Sub 50 to Distributing 4 in exchange for Distributing 4 Common Stock (the “Sub 37 Contribution, and together with the Distributing 5 Contribution, the “Distributing 4 Contributions”).

(xxxv) Following the Distributing 5 Contribution, Distributing 4 will contribute Sub 36 LLC to Sub 18.

(xxxvi) Sub 18 will contribute Sub 36 LLC to Sub 47.

(xxxvii) Distributing 3 will contribute all of the Controlled 1 CPECs and Controlled 1 Common Stock to newly formed Controlled 3 in exchange for stock (“Controlled 3 Common Stock,” and the “Controlled 3 Contribution”).

(xxxviii) Distributing 3 will distribute all of the Controlled 3 Common Stock to Distributing 4 (together with the Controlled 3 Contribution, “Divisive Reorganization 3”).

(xxxix) Distributing 4 will contribute to Distributing 3 all of the stock and equity interests in Sub 50 and Sub 34 LLC and a d-percent equity interest in FSub 6 (the “Distributing 3 Contribution”).

(xl) Distributing 4 will distribute to Distributing 5 all of the Distributing 3 Common Stock in redemption of an equal value of Distributing 4 Common Stock (together with the Distributing 3 Contribution, “Divisive Reorganization 4”).

(xli) Distributing 3 will contribute all of the Controlled 2 CPECs and Controlled 2 Common Stock to newly formed Controlled 4, a State A corporation, in exchange for stock (“Controlled 4 Common Stock, and “Controlled 4 Contribution 1”).

(xlii) Distributing 3 will distribute all of the Controlled 4 Common Stock to Distributing 5 (together with Controlled 4 Contribution 1, “Divisive Reorganization 5”). Divisive Reorganization 1, Divisive Reorganization 2, Distribution 1, Distribution 2, Divisive Reorganization 3, Divisive Reorganization 4, and Divisive Reorganization 5 are referred to collectively as the “Internal Distributions.”

(xliii) Distributing 5 will contribute all the stock of Sub 46 to Sub 4.

(xliv) Distributing 5 will contribute all of its interests in the First-Tier Business A Subsidiaries (including Sub 8 LLC), Distributing 3, Sub 48, and Sub 51, all of its equity interests in the Sub 32 Business A Subsidiaries, and certain assets used in Business A (including those received in the Sub 3 Asset Distribution) to newly formed Controlled 5, a State A corporation, in exchange for stock (“Controlled 5 Common Stock”), the Controlled 5 Cash Distribution (defined below) and the assumption by Controlled 5 of certain liabilities associated with the contributed assets (the “Controlled 5 Contribution”). Certain Business A divisions directly held by Distributing 5 will not be contributed directly to Controlled 5 in the Controlled 5 Contribution but will instead be contributed to a series of domestic LLCs treated as disregarded entities of Controlled 5.

(xlv) Sub 42, Sub 43, Sub 44, Sub 45, and Sub 46 will merge with and into Sub 4 with Sub 4 surviving.

(xlvi) Distributing 5 will contribute to newly formed Controlled 4, a State A corporation, all of its interests in the First-Tier Business C Subsidiaries and certain assets used in Business C (including those received in the Sub 3 Asset Distribution) in exchange for the Controlled 4 Cash Distribution (defined below), and the assumption by Controlled 4 of certain liabilities associated with the contributed assets (“Controlled 4 Contribution 2”).

(xlvii) Immediately before the External Distributions (defined below), Controlled 5 and/or its subsidiaries (the “Controlled 5 Group”) and Controlled 4 and/or its subsidiaries (the “Controlled 4 Group”) will access the public debt markets and/or borrow under bank facilities to put in place appropriate capital structures for each group, as determined by Distributing 5 management based on recommendations from financial advisors.

(xlviii) The proceeds of the new public debt and/or bank loans will be used, in whole or in part, to repay the portion of the Distributing 5 debt that will not be retained by the Distributing 5 Group or assumed by the Controlled 5 Group or the Controlled 4 Group. The proceeds will be distributed by Controlled 5 and Controlled 4, respectively, to Distributing 5 in connection with the Controlled 5 Contribution (the “Controlled 5 Cash Distribution”) and Controlled 4 Contribution 2 (the “Controlled 4 Cash Distribution”).

(xlix) Following the Controlled 5 Contribution, and concurrently with the Controlled 4 Distribution (defined below), Distributing 5 will distribute all of the Controlled 5 Common Stock (including Controlled 5 Restricted Stock) pro rata to the Distributing 5 Stockholders (and holders of Distributing 5 Restricted Stock) (the “Controlled 5 Distribution,” and together with the Controlled 5 Contribution, “Divisive Reorganization 6”).

(l) Following Controlled 4 Contribution 2, and concurrently with the Controlled 5 Distribution, Distributing 5 will distribute all of the Controlled 4 Common Stock (including Controlled 4 Restricted Stock) pro rata to the Distributing 5 Stockholders (and holders of Distributing 5 Restricted Stock) (the “Controlled 4 Distribution,” and together with Controlled 4 Contribution 2, “Divisive Reorganization 7”). Divisive Reorganization 6 and Divisive Reorganization 7 together are referred to as the “External Distributions.” The Internal Distributions and the External Distributions together are referred to as the “Distributions” and each as a “Distribution.”

No fractional shares of Controlled 4 Common Stock or Controlled 5 Common Stock will be issued in the External Distributions. Instead, all fractional shares of Controlled 4 Common Stock and Controlled 5 Common Stock that Distributing 5 Stockholders otherwise would be entitled to receive will be aggregated by a transfer agent and, as soon as practicable following the effective time of the External Distributions, will be sold at the prevailing price on the New York Stock Exchange. Any Distributing 5 Stockholder entitled to receive a fractional share of Controlled 4 Common Stock or Controlled 5 Common Stock will be entitled to receive a cash payment in an amount equal to the shareholder’s proportionate interest in the net proceeds from the open market sale.

(li) Distributing 5 will undergo a reverse stock split (the “Reverse Stock Split”) in connection with the External Distributions to adjust the number of shares of Distributing 5 Common Stock outstanding. In the Reverse Stock Split, Distributing 5 will issue one share of new common stock (“New Distributing 5 Common Stock”) in exchange for a specified number of shares of outstanding Distributing 5 Common Stock. No fractional shares of New Distributing 5 Common Stock will be issued in the Reverse Stock Split, and each person otherwise entitled to a fractional share will receive cash in lieu of such share.

Following the External Distributions, Distributing 5, Controlled 5, or Controlled 4, as the case may be, may be required to pay one or both of the other corporations an amount of cash based on the difference between (i) the actual amount of cash held in bank and other accounts of Distributing 5, Controlled 5, and Controlled 4 immediately following the External Distributions; and (ii) the amount in such accounts that was to be retained under the terms of the Distribution Agreement (defined below) (the “Post-Closing Cash Adjustments”).

In connection with the External Distributions, Distributing 5, Controlled 5, and Controlled 4 will enter into (i) a distribution agreement (the “Distribution Agreement”), (ii) a tax matters agreement (the “Tax Matters Agreement”), (iii) transition services agreements (the “Transition Services Agreements”), (iv) intellectual property transfer and license agreements (the “IP Agreements”) covering, among other things, trademarks associated with certain brands that will be owned by the Distributing 5 Group following the External Distributions (the “Trademark IP Agreements”), and (v) master lease and sublease agreements covering certain real estate (collectively with the other agreements, the “Separation Agreements”). In addition, Distributing 5, Controlled 5, and Controlled 4 may enter into intercompany supply agreements (the “Intercompany Supply Agreements”).

The Distribution Agreement will contain indemnification provisions that are collectively referred to as the “General Indemnification Agreements.” The Tax Matters Agreement will contain indemnification provisions relating to tax matters (including tax liabilities resulting from certain of the Proposed Transactions) that are collectively referred to as the “Tax Indemnification Provisions.”

After the External Distributions, Distributing 5, Controlled 5, and Controlled 4 will operate as independent companies with separate boards of directors, each having at least r members. Initially, it is expected that (i) s members of the Distributing 5 board will also serve on the Controlled 5 board but that, following a one- to two-year transition period, one of these directors will cease to serve on the Distributing 5 board and the other will cease to serve on the Controlled 5 board; (ii) s other members of the Distributing 5 board will also serve on the Controlled 4 board but that, following a one- to two-year transition period, d of these directors will cease to serve on the Distributing 5 board and the other will cease to serve on the Controlled 4 board; and (iii) s other members of the Controlled 5 board (including its executive chairman) will also serve on the Controlled 4 board but that, following a one- to two-year transition period, d of these directors will cease to serve on the Controlled 5 board and the other (the executive chairman of the Controlled 5 board) will cease to serve on the Controlled 4 board. In each case, the members are being asked to serve on multiple boards to reassure the financial markets by providing a sense of business continuity.

## REPRESENTATIONS

### The Conversions

As defined above, “Conversions” refers only to the Sub 3 Conversion, Sub 8 Conversion, and Sub 34 Conversion. In the representations that follow, the terms “Parent” and “Subsidiary” are defined for each Conversion as indicated below:

| “Conversion” | “Parent” | “Subsidiary” |
|--------------|----------|--------------|
|--------------|----------|--------------|

|                   |                |        |
|-------------------|----------------|--------|
| Sub 3 Conversion  | Distributing 5 | Sub 3  |
| Sub 8 Conversion  | Distributing 4 | Sub 8  |
| Sub 34 Conversion | Distributing 4 | Sub 34 |

Distributing 5 has made the following representations for each Conversion:

- (a) Parent, on the date of adoption of the plan of the Conversion (the "Conversion Plan Date"), and at all times thereafter until the Conversion is completed, will own 100 percent of the single outstanding class of Subsidiary stock.
- (b) No shares of Subsidiary will have been redeemed during the three years preceding the Conversion Plan Date.
- (c) The Conversion will take place within a single taxable year.
- (d) Upon the Conversion, Subsidiary will cease to be regarded as a taxable entity separate from Parent.
- (e) Subsidiary (as a corporation) will not retain any assets following the Conversion.
- (f) Subsidiary will not have acquired assets in any nontaxable transaction at any time except for acquisitions occurring more than three years prior to the Conversion Plan Date.
- (g) No assets of Subsidiary have been, or will be, disposed of by either Subsidiary or Parent except for dispositions in the ordinary course of business, dispositions occurring more than three years prior to the Conversion Plan Date or dispositions that occur as part of the Proposed Transactions.
- (h) Prior to the Conversion Plan Date, no assets of Subsidiary will have been distributed in kind, transferred, or sold to Parent, except for (i) transactions occurring in the normal course of business and (ii) transactions occurring more than three years prior to the Conversion Plan Date.
- (i) Subsidiary will report all earned income represented by assets that will be deemed distributed to Parent, such as receivables being reported on a cash basis, unfinished construction contracts, commissions due, etc.
- (j) The fair market value of the assets of Subsidiary will exceed its liabilities, both at the Conversion Plan Date and immediately prior to the time the Conversion occurs.



(k) The fair market value of the assets of Subsidiary transferred to Parent will exceed the sum of (i) the amount of liabilities assumed by Parent and (ii) the amount of liabilities owed to Parent by Subsidiary.

(l) There will be no intercorporate debt existing between Parent and Subsidiary, and none has been canceled, forgiven, or discounted, except for transactions that occurred more than three years prior to the Conversion Plan Date.

(m) Parent will not be an organization that is exempt from Federal income tax under section 501 or another provision of the Code.

(n) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to, the Conversion have been fully disclosed.

Distributing 5 has made the following additional representation for the Sub 8 Conversion and the Sub 34 Conversion:

(o) The Conversion will not be preceded or followed by the reincorporation in, or transfer or sale to, a recipient corporation (a "Recipient") of any of the businesses or assets of Subsidiary, if persons holding, directly or indirectly, more than 20 percent in value of the Subsidiary stock also hold, directly or indirectly, more than 20 percent in value of the stock in Recipient. For purposes of this representation, ownership will be determined immediately after the External Distributions and by application of the constructive ownership rules of section 318(a) as modified by section 304(c)(3).

Distributing 5 has made the following additional representations for the Sub 3 Conversion:

(p) The Sub 3 Conversion will not be preceded or followed by the reincorporation, transfer, or sale of all or a part of the business assets of Sub 3 to another corporation that is the *alter ego* of Sub 3

(q) The fair market value of the Distributing 5 Common Stock deemed received by Distributing 5 in the Sub 3 Conversion will be approximately equal to the fair market value of the Sub 3 stock deemed surrendered in the exchange.

(r) In the Sub 3 Conversion, Distributing 5 will be deemed to acquire a direct interest in the Sub 3 business enterprise through its ownership interest in Sub 3 LLC.

(s) Distributing 5 will be deemed to acquire at least 90 percent of the fair market value of the net assets and at least 70 percent of the fair market value of



the gross assets held by Sub 3 immediately before the Sub 3 Conversion. For purposes of this representation, amounts used by Sub 3 to pay its reorganization expenses, amounts paid by Sub 3 to shareholders who receive cash or other property, and all redemptions and distributions (except for regular, normal dividends) made by Sub 3 immediately before the transfer will be included as assets of Sub 3 held immediately before the Sub 3 Conversion.

(t) During the five-year period ending on the date of the Sub 3 Conversion: (i) no person related (as defined in Treas. Reg. § 1.368-1(e)(4)) to Distributing 5 will have acquired Sub 3 stock with consideration other than Distributing 5 Common Stock; (ii) no person related to Distributing 5 will have acquired or redeemed Sub 3 stock with consideration other than Distributing 5 Common Stock or Sub 3 stock; and (iii) no distribution will have been made with respect to the stock of Sub 3, other than ordinary, normal, regular dividend distributions made pursuant to the historic dividend paying practice of Sub 3, either directly or through any transaction, agreement, or arrangement with any other person.

(u) Distributing 5 has no plan or intention to sell or otherwise dispose of any of the assets of Sub 3 deemed acquired in the transaction, except for dispositions made in the ordinary course of business and transfers described in section 368(a)(2)(C) or Treas. Reg. § 1.368-2(k).

(v) Sub 3 will be treated as distributing the Distributing 5 Common Stock deemed received in the Sub 3 Conversion, and its other properties, in pursuance of the plan of reorganization.

(w) The liabilities of Sub 3 deemed assumed by Distributing 5 (within the meaning of section 357(d)) will have been incurred by Sub 3 in the ordinary course of its business and will be associated with the assets deemed transferred to Distributing 5.

(x) Following the transaction, Distributing 5 will continue, either directly or through one or more members of its qualified group (within the meaning of Treas. Reg. § 1.368-1(d)(4)(ii)), the historic business of Sub 3 or will use a significant portion of Sub 3's historic business assets in a business.

(y) Distributing 5 will pay or assume the expenses, if any, of each party incurred in connection with the Sub 3 Conversion in accordance with the guidelines of Rev. Rul. 73-54, 1973-1 C.B. 189.

(z) There is no intercorporate indebtedness existing between Distributing 5 and Sub 3 that was issued, acquired, or will be settled at a discount.

(2a) No two parties to the Sub 3 Conversion are investment companies as defined in section 368(a)(2)(F)(iii) and (iv).

(2b) The total fair market value of the assets of Sub 3 deemed transferred to Distributing 5 in the Sub 3 Conversion will exceed the sum of: (i) the amount of any liabilities deemed assumed (within the meaning of section 357(d)) by Distributing 5 in the exchange; (ii) the amount of any liabilities owed to Distributing 5 by Sub 3 that are discharged or extinguished in connection with the exchange; and (iii) the amount of cash and the fair market value of any other property (other than stock and securities permitted to be received under section 361(a) without recognition of gain) received by Sub 3 in the exchange. The fair market value of the assets of Distributing 5 will exceed the amount of its liabilities immediately after the Sub 3 Conversion.

(2c) Sub 3 is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of section 368(a)(3)(A).

(2d) Items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations as a result of the Sub 3 Conversion (see Treas. Reg. §§ 1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; Treas. Reg. § 1.1502-13, as published by T.D. 8597).

(2e) The Sub 3 Conversion and the contributions of Sub 3 assets to Distributing 4, Controlled 5, and Controlled 4 will be effected pursuant to a single plan.

### The Contributions and Distributions

In the representations that follow, the terms “Controlled,” “Distributing,” “Distributing Stockholder(s),” and “Contribution” are defined for each Distribution as indicated below:

| <b>“Distribution”</b>     | <b>“Controlled”</b> | <b>“Distributing”</b> | <b>“Distributing Stockholder(s)”</b> | <b>“Contribution”</b>     |
|---------------------------|---------------------|-----------------------|--------------------------------------|---------------------------|
| Divisive Reorganization 1 | Controlled 1        | Distributing 1        | Distributing 2                       | Controlled 1 Contribution |
| Divisive Reorganization 2 | Controlled 2        | Distributing 1        | Distributing 2                       | Controlled 2 Contribution |
| Distribution 1            | Controlled 1        | Distributing 2        | Distributing 3                       | N/A                       |
| Distribution 2            | Controlled 2        | Distributing 2        | Distributing 3                       | N/A                       |

|                           |                |                |                             |                             |
|---------------------------|----------------|----------------|-----------------------------|-----------------------------|
| Divisive Reorganization 3 | Controlled 3   | Distributing 3 | Distributing 4              | Controlled 3 Contribution   |
| Divisive Reorganization 4 | Distributing 3 | Distributing 4 | Distributing 5              | Distributing 3 Contribution |
| Divisive Reorganization 5 | Controlled 4   | Distributing 3 | Distributing 5              | Controlled 4 Contribution 1 |
| Divisive Reorganization 6 | Controlled 5   | Distributing 5 | Distributing 5 Stockholders | Controlled 5 Contribution   |
| Divisive Reorganization 7 | Controlled 4   | Distributing 5 | Distributing 5 Stockholders | Controlled 4 Contribution 2 |

The term “Active Business” refers to the active trade or business (as defined under section 355(b) and related Treasury Regulations) of a particular Distributing or Controlled, as appropriate.

*Divisive Reorganization 1 and Divisive Reorganization 2*

Distributing 5 has made the following representations for each of Divisive Reorganization 1 and Divisive Reorganization 2:

(2f) Distributing, Controlled, and Distributing Stockholder each will pay their own expenses, if any, incurred in connection with the Distribution.

(2g) The Distributing CPECs are equity of Distributing for Federal income tax purposes, and Distributing has treated them as such since the date of their issuance.

(2h) The Controlled CPECs will be equity of Controlled for Federal income tax purposes.

(2i) No part of the consideration distributed in the Distribution will be received by Distributing Stockholder as a creditor, employee, or in any capacity other than that of an equity holder of Distributing.

(2j) The fair market value of the Controlled CPECs and any Controlled Common Stock received by Distributing Stockholder will be approximately equal to the fair market value of the Distributing CPECs and any Distributing Common Stock surrendered by Distributing Stockholder in the exchange.

(2k) Distributing and Controlled will each treat all members of its separate affiliated group, as defined in section 355(b)(3)(B) ("SAG"), as one corporation in determining whether it meets the requirements of section 355(b)(2)(A) regarding the active conduct of a trade or business.

(2l) The five years of financial information submitted on behalf of the Distributing Active Business is representative of the present operations of the Distributing Active Business and there have been no substantial operational changes since the date of the last financial statements submitted.

(2m) The five years of financial information submitted on behalf of the Controlled Active Business is representative of the present operations of the Controlled Active Business and there have been no substantial operational changes since the date of the last financial statements submitted.

(2n) Immediately after the distribution, Distributing will be the parent of a SAG that is engaged in an active trade or business under section 355(b)(3)(B).

(2o) Immediately after the distribution, Controlled will be the parent of a SAG that is engaged in an active trade or business under section 355(b)(3)(B).

(2p) Neither the Distributing Active Business nor control of an entity conducting this business will have been acquired during the five-year period immediately preceding the Distribution (the "Five-Year Period") in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part, except in connection with transfers between members of an affiliated group within the meaning of Treas. Reg. § 1.355-3(b)(4)(iv) or in connection with the expansion of an existing five-year trade or business.

(2q) Neither the Controlled Active Business nor control of an entity conducting this business will have been acquired during the Five-Year Period in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part, except in connection with transfers between members of an affiliated group within the meaning of Treas. Reg. § 1.355-3(b)(4)(iv) or in connection with the expansion of an existing five-year trade or business.

(2r) Except for certain services to be provided under the Separation Agreements following the Distribution, Distributing and Controlled will each continue the conduct of its Active Business, independently and with its separate employees.

(2s) The Distribution is being carried out to facilitate the External Distribution to which it relates, each of which is being carried out for the Corporate Business Purposes. The Distribution is motivated, in whole or in substantial part, by one or more of the Corporate Business Purposes.

(2t) The Distribution is not used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.

(2u) The total adjusted basis and the fair market value of the assets transferred to Controlled by Distributing in the Contribution each will equal or exceed the sum of (i) the total amount of any liabilities assumed (as determined under section 357(d)) by Controlled and (ii) the total amount of any money and the fair market value of any other property (within the meaning of section 361(b)) received by Distributing and transferred to its creditors in connection with the reorganization.

(2v) Any liabilities assumed (as determined under section 357(d)) by Controlled in the Contribution will have been incurred in the ordinary course of business and will be associated with the assets transferred.

(2w) The total fair market value of the assets transferred to Controlled in the Contribution will exceed the sum of (i) the amount of any liabilities assumed (as determined under section 357(d)) by Controlled in connection with the Contribution, (ii) the amount of any liabilities owed to Controlled by Distributing that are discharged or extinguished in connection with the Contribution, and (iii) the amount of any cash and the fair market value of any other property (other than stock and securities permitted to be received under section 361(a) without the recognition of gain) received by Distributing in connection with the Contribution. The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the Contribution.

(2x) The aggregate fair market value of the assets Distributing transfers to Controlled in the Contribution will equal or exceed the aggregate adjusted basis of those assets.

(2y) There is no plan or intention to liquidate Distributing (or any other member of the Distributing SAG engaged in the Active Trade or Business) or Controlled (or any other member of the Controlled SAG engaged in the Active Trade or Business), to merge any of these corporations with any other corporation, or to sell or otherwise dispose of the assets of any of these corporations after the Distribution, except in the ordinary course of business or as part of the Proposed Transactions.

(2z) Distributing will neither accumulate its receivables nor make extraordinary payment of its payables in anticipation of the Distribution.

(3a) No property will be transferred by Distributing to Controlled for which an investment credit allowed under section 46 has been or will be claimed.

(3b) No intercorporate debt will exist between Distributing (or any entity controlled directly or indirectly by Distributing) and Controlled (or any entity controlled directly or indirectly by Controlled) at the time of, or subsequent to, the Distribution other than any indebtedness that has arisen in the ordinary course of business or that may arise after the Distribution in connection with a Separation Agreement or an Intercompany Supply Agreement.

(3c) Any indebtedness between Distributing and Controlled after the Distribution will not constitute stock or securities.

(3d) Apart from certain payments made under the Trademark IP Agreements and the Transition Services Agreements, payments made in connection with any continuing transactions between or among Distributing 5 or any of its subsidiaries, Controlled 4 or any of its subsidiaries, and Controlled 5 or any of its subsidiaries will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(3e) No two parties to the Distribution are investment companies as defined in sections 368(a)(2)(F)(iii) and (iv).

(3f) For purposes of section 355(d), immediately after the Distribution, no person (determined after applying section 355(d)(7)) will hold equity interests possessing 50 percent or more of the total combined voting power of all classes of Distributing equity interests entitled to vote, or 50 percent or more of the total value of all classes of Distributing equity interests, that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the Five-Year Period (determined after applying section 355(d)(6)).

(3g) For purposes of section 355(d), immediately after the Distribution, no person (determined after applying section 355(d)(7)) will hold equity interests possessing 50 percent or more of the total combined voting power of all classes of Controlled equity interests entitled to vote, or 50 percent or more of the total value of all classes of Controlled equity interests, that were either (i) acquired by purchase (as defined in section 355(d)(5) and (8)) during the Five-Year Period (determined after applying section 355(d)(6)) or (ii) attributable to distributions on Distributing equity interests that were acquired by purchase (as defined in section 355(d)(5) and (8)) during the Five-Year Period (determined after applying section 355(d)(6)).

(3h) The Distribution is not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly equity interests possessing 50 percent or more of the total combined voting power of all classes of equity interests of Distributing or Controlled or equity interests possessing 50 percent or more of the

total value of all classes of equity interests of Distributing or Controlled (including any predecessor or successor of such corporation).

(3i) Immediately following the Distribution (taking into account section 355(g)(4)), either (i) no person will hold a 50-percent or greater interest (within the meaning of section 355(g)(3)) in Distributing or Controlled, (ii) if any person holds a 50-percent or greater interest (within the meaning of section 355(g)(3)) in any disqualified investment corporation (within the meaning of section 355(g)(2)), such person will have held such interest in such corporation immediately before the transaction, or (iii) neither Distributing nor Controlled will be a disqualified investment corporation (within the meaning of section 355(g)(2)).

(3j) Distributing and Controlled will be controlled foreign corporations, within the meaning of section 957(a), immediately before and after (in the case of Distributing) and immediately after (in the case of Controlled) the Contribution.

(3k) Distributing 3 will be a section 1248 shareholder, within the meaning of Treas. Reg. § 1.367(b)-2(b), with respect to each of Distributing Stockholder, Distributing, and Controlled immediately before and after (in the case of Distributing Stockholder and Distributing) and immediately after (in the case of Controlled) the Contribution.

(3l) Distributing and Controlled will be controlled foreign corporations, within the meaning of section 957(a), immediately before and after the Distribution.

(3m) Distributing 3 will be a section 1248 shareholder, within the meaning of Treas. Reg. § 1.367(b)-2(b), with respect to each of Distributing Stockholder, Distributing, and Controlled immediately before and after the Distribution.

(3n) Neither Distributing nor Controlled will have been a U.S. real property holding corporation (as defined in section 897(c)(2)) at any time during the Five-Year Period.

(3o) Neither Distributing nor Controlled will be a U.S. real property holding corporation immediately after the Distribution.

(3p) Controlled will not hold any U.S. real property interests, as defined in section 897(c)(1), immediately before or after the Distribution.

(3q) There is no declared and unpaid yield with respect to the Distributing 1 CPECs.

#### *Distribution 1 and Distribution 2*

Distributing 5 has made the following representations for each of Distribution 1 and Distribution 2:

(3r) Distributing, Controlled, and Distributing Stockholder each will pay their own expenses, if any, incurred in connection with the Distribution.

(3s) The Distributing CPECs are equity of Distributing for Federal income tax purposes, and Distributing has treated them as such since the date of their issuance.

(3t) The Controlled CPECs will be equity of Controlled for Federal income tax purposes.

(3u) No part of the consideration distributed in the Distribution will be received by Distributing Stockholder as a creditor, employee, or in any capacity other than that of an equity holder of Distributing.

(3v) The fair market value of the Controlled CPECs and any Controlled Common Stock received by Distributing Stockholder will be approximately equal to the fair market value of the Distributing CPECs and any Distributing Common Stock surrendered by Distributing Stockholder in the exchange.

(3w) Distributing and Controlled will each treat all members of its SAG as one corporation in determining whether it meets the requirements of section 355(b)(2)(A) regarding the active conduct of a trade or business.

(3x) The five years of financial information submitted on behalf of the Distributing Active Business is representative of the present operations of the Distributing Active Business and there have been no substantial operational changes since the date of the last financial statements submitted.

(3y) The five years of financial information submitted on behalf of the Controlled Active Business is representative of the present operations of the Controlled Active Business and there have been no substantial operational changes since the date of the last financial statements submitted.

(3z) Immediately after the distribution, Distributing will be the parent of a SAG that is engaged in an active trade or business under section 355(b)(3)(B).

(4a) Immediately after the distribution, Controlled will be the parent of a SAG that is engaged in an active trade or business under section 355(b)(3)(B).

(4b) Neither the Distributing Active Business nor control of an entity conducting this business will have been acquired during the Five-Year Period in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part, except in connection with transfers between members of an affiliated group within the meaning of Treas. Reg. § 1.355-3(b)(4)(iv) or in connection with the expansion of an existing five-year trade or business.



(4c) Neither the Controlled Active Business nor control of an entity conducting this business will have been acquired during the Five-Year Period in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part, except in connection with transfers between members of an affiliated group within the meaning of Treas. Reg. § 1.355-3(b)(4)(iv) or in connection with the expansion of an existing five-year trade or business.

(4d) Except for certain services to be provided under the Separation Agreements following the Distribution, Distributing and Controlled will each continue the conduct of its Active Business, independently and with its separate employees.

(4e) The Distribution is being carried out to facilitate the External Distribution to which it relates, each of which is being carried out for the Corporate Business Purposes. The Distribution is motivated, in whole or in substantial part, by one or more of the Corporate Business Purposes.

(4f) The Distribution is not used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.

(4g) There is no plan or intention to liquidate Distributing (or any other member of the Distributing SAG engaged in the Active Trade or Business) or Controlled (or any other member of the Controlled SAG engaged in the Active Trade or Business), to merge any of these corporations with any other corporation, or to sell or otherwise dispose of the assets of any of these corporations after the Distribution, except in the ordinary course of business or as part of the Proposed Transactions.

(4h) Distributing will neither accumulate its receivables nor make extraordinary payment of its payables in anticipation of the Distribution.

(4i) No intercorporate debt will exist between Distributing (or any entity controlled directly or indirectly by Distributing) and Controlled (or any entity controlled directly or indirectly by Controlled) at the time of, or subsequent to, the Distribution other than any indebtedness that has arisen in the ordinary course of business or that may arise after the Distribution in connection with a Separation Agreement or an Intercompany Supply Agreement.

(4j) Any indebtedness between Distributing and Controlled after the Distribution will not constitute stock or securities.

(4k) Apart from certain payments made under the Trademark IP Agreements and the Transition Services Agreements, payments made in connection with any continuing transactions between or among Distributing 5 or any of its subsidiaries, Controlled 4 or any of its subsidiaries, and Controlled 5 or any of its

subsidiaries will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(4l) No two parties to the Distribution are investment companies as defined in sections 368(a)(2)(F)(iii) and (iv).

(4m) For purposes of section 355(d), immediately after the Distribution, no person (determined after applying section 355(d)(7)) will hold equity interests possessing 50 percent or more of the total combined voting power of all classes of Distributing equity interests entitled to vote, or 50 percent or more of the total value of all classes of Distributing equity interests, that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the Five-Year Period (determined after applying section 355(d)(6)).

(4n) For purposes of section 355(d), immediately after the Distribution, no person (determined after applying section 355(d)(7)) will hold equity interests possessing 50 percent or more of the total combined voting power of all classes of Controlled equity interests entitled to vote, or 50 percent or more of the total value of all classes of Controlled equity interests, that were either (i) acquired by purchase (as defined in section 355(d)(5) and (8)) during the Five-Year Period (determined after applying section 355(d)(6)) or (ii) attributable to distributions on Distributing equity interests that were acquired by purchase (as defined in section 355(d)(5) and (8)) during the Five-Year Period (determined after applying section 355(d)(6)).

(4o) The Distribution is not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly equity interests possessing 50 percent or more of the total combined voting power of all classes of equity interests of Distributing or Controlled or equity interests possessing 50 percent or more of the total value of all classes of equity interests of Distributing or Controlled (including any predecessor or successor of such corporation).

(4p) Immediately following the Distribution (taking into account section 355(g)(4)), either (i) no person will hold a 50-percent or greater interest (within the meaning of section 355(g)(3)) in Distributing or Controlled, (ii) if any person holds a 50-percent or greater interest (within the meaning of section 355(g)(3)) in any disqualified investment corporation (within the meaning of section 355(g)(2)), such person will have held such interest in such corporation immediately before the transaction, or (iii) neither Distributing nor Controlled will be a disqualified investment corporation (within the meaning of section 355(g)(2)).

(4q) Distributing and Controlled will be controlled foreign corporations, within the meaning of section 957(a), immediately before and after (in the case of Distributing) and immediately after (in the case of Controlled) the Distribution.

(4r) Distributing Stockholder will be a section 1248 shareholder, within the meaning of Treas. Reg. § 1.367(b)-2(b), with respect to each of Distributing and Controlled immediately before and after (in the case of Distributing) and immediately after (in the case of Controlled) the Distribution.

(4s) Neither Distributing nor Controlled will have been a U.S. real property holding corporation (as defined in section 897(c)(2)) at any time during the Five-Year Period.

(4t) Neither Distributing nor Controlled will be a U.S. real property holding corporation immediately after the Distribution.

(4u) Controlled will not hold any U.S. real property interests, as defined in section 897(c)(1), immediately before or after the Distribution.

(4v) There is no declared and unpaid yield with respect to the Distributing 2 CPECs.

*Divisive Reorganization 3 and Divisive Reorganization 5*

Distributing 5 has made the following representations for each of Divisive Reorganization 3 and Divisive Reorganization 5:

(4w) Distributing, Controlled, and Distributing Stockholder each will pay their own expenses, if any, incurred in connection with the Distribution.

(4x) No part of the consideration distributed in the Distribution will be received by Distributing Stockholder as a creditor, employee, or in any capacity other than that of a stockholder of Distributing.

(4y) Distributing and Controlled will each treat all members of its SAG as one corporation in determining whether it meets the requirements of section 355(b)(2)(A) regarding the active conduct of a trade or business.

(4z) The five years of financial information submitted on behalf of the Distributing Active Business is representative of the present operations of the Distributing Active Business and there have been no substantial operational changes since the date of the last financial statements submitted.

(5a) The five years of financial information submitted on behalf of the Controlled Active Business is representative of the present operations of the Controlled Active Business and there have been no substantial operational changes since the date of the last financial statements submitted.

(5b) Immediately after the distribution, Distributing will be the parent of a SAG that is engaged in an active trade or business under section 355(b)(3)(B).

(5c) Immediately after the distribution, Controlled will be the parent of a SAG that is engaged in an active trade or business under section 355(b)(3)(B).

(5d) Neither the Distributing Active Business nor control of an entity conducting this business will have been acquired during the Five-Year Period in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part, except in connection with transfers between members of an affiliated group within the meaning of Treas. Reg. § 1.355-3(b)(4)(iv) or in connection with the expansion of an existing five-year trade or business.

(5e) Neither the Controlled Active Business nor control of an entity conducting this business will have been acquired during the Five-Year Period in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part, except in connection with transfers between members of an affiliated group within the meaning of Treas. Reg. § 1.355-3(b)(4)(iv) or in connection with the expansion of an existing five-year trade or business.

(5f) Except for certain services to be provided under the Separation Agreements following the Distribution, Distributing and Controlled will each continue the conduct of its Active Business, independently and with its separate employees.

(5g) The Distribution is being carried out to facilitate the External Distribution to which it relates, each of which is being carried out for the Corporate Business Purposes. The Distribution is motivated, in whole or in substantial part, by one or more of the Corporate Business Purposes.

(5h) The Distribution is not used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.

(5i) The total adjusted basis and the fair market value of the assets transferred to Controlled by Distributing in the Contribution each will equal or exceed the sum of (i) the total amount of any liabilities assumed (as determined under section 357(d)) by Controlled and (ii) the total amount of any money and the fair market value of any other property (within the meaning of section 361(b)) received by Distributing and transferred to its creditors in connection with the reorganization.

(5j) Any liabilities assumed (as determined under Section 357(d)) by Controlled in the Contribution will have been incurred in the ordinary course of business and will be associated with the assets transferred.

(5k) The total fair market value of the assets transferred to Controlled in the Contribution will exceed the sum of (i) the amount of any liabilities assumed (as determined under section 357(d)) by Controlled in connection with the

Contribution, (ii) the amount of any liabilities owed to Controlled by Distributing that are discharged or extinguished in connection with the Contribution, and (iii) the amount of any cash and the fair market value of any other property (other than stock and securities permitted to be received under section 361(a) without the recognition of gain) received by Distributing in connection with the Contribution. The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the Contribution.

(5l) The aggregate fair market value of the assets Distributing transfers to Controlled in the Contribution will equal or exceed the aggregate adjusted basis of these assets.

(5m) There is no plan or intention to liquidate Distributing (or any other member of the Distributing SAG engaged in the Active Trade or Business) or Controlled (or any other member of the Controlled SAG engaged in the Active Trade or Business), to merge any of these corporations with any other corporation, or to sell or otherwise dispose of the assets of any of these corporations after the Distribution, except in the ordinary course of business or as part of the Proposed Transactions.

(5n) Distributing will neither accumulate its receivables nor make extraordinary payment of its payables in anticipation of the Distribution.

(5o) No property will be transferred by Distributing to Controlled for which an investment credit allowed under section 46 has been or will be claimed.

(5p) No intercorporate debt will exist between Distributing (or any entity controlled directly or indirectly by Distributing) and Controlled (or any entity controlled directly or indirectly by Controlled) at the time of, or subsequent to, the Distribution other than any indebtedness that has arisen in the ordinary course of business or that may arise after the Distribution in connection with a Separation Agreement or an Intercompany Supply Agreement.

(5q) Immediately before the Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see Treas. Reg. §§ 1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and, as currently in effect, Treas. Reg. § 1.1502-13 as published by T.D. 8597). Further, any excess loss account Distributing may have in the Controlled Common Stock or the stock of any direct or indirect subsidiary of Controlled will be included in income immediately before the Distribution to the extent required by Treasury Regulations (see Treas. Reg. § 1.1502-19). At the time of the Distribution, Distributing will not have an excess loss account in the Controlled Common Stock or the stock of any direct or indirect subsidiary of Controlled.

(5r) Any indebtedness between Distributing and Controlled after the Distribution will not constitute stock or securities.

(5s) Apart from certain payments made under the Trademark IP Agreements and the Transition Services Agreements, payments made in connection with any continuing transactions between or among Distributing 5 or any of its subsidiaries, Controlled 4 or any of its subsidiaries, and Controlled 5 or any of its subsidiaries will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(5t) No two parties to the Distribution are investment companies as defined in sections 368(a)(2)(F)(iii) and (iv).

(5u) For purposes of section 355(d), immediately after the Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50 percent or more of the total value of all classes of Distributing stock, that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the Five-Year Period (determined after applying section 355(d)(6)).

(5v) For purposes of section 355(d), immediately after the Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50 percent or more of the total value of all classes of Controlled stock, that was either (i) acquired by purchase (as defined in section 355(d)(5) and (8)) during the Five-Year Period (determined after applying section 355(d)(6)) or (ii) attributable to distributions on Distributing stock that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the Five-Year Period (determined after applying section 355(d)(6)).

(5w) The Distribution is not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock possessing 50 percent or more of the total combined voting power of all classes of stock of Distributing or Controlled or stock possessing 50 percent or more of the total value of all classes of stock of Distributing or Controlled (including any predecessor or successor of such corporation).

(5x) Immediately following the Distribution (taking into account section 355(g)(4)), either (i) no person will hold a 50-percent or greater interest (within the meaning of section 355(g)(3)) in Distributing or Controlled, (ii) if any person holds a 50-percent or greater interest (within the meaning of section 355(g)(3)) in any disqualified investment corporation (within the meaning of section 355(g)(2)), such person will have held such interest in such corporation immediately before

the transaction, or (iii) neither Distributing nor Controlled will be a disqualified investment corporation (within the meaning of section 355(g)(2)).

*Divisive Reorganization 4*

4: Distributing 5 has made the following representations for Divisive Reorganization

(5y) Distributing, Controlled, and Distributing Stockholder each will pay their own expenses, if any, incurred in connection with the Distribution.

(5z) No part of the consideration distributed in the Distribution will be received by Distributing Stockholder as a creditor, employee, or in any capacity other than that of a stockholder of Distributing.

(6a) The fair market value of the Controlled Common Stock to be received by Distributing Stockholder will be approximately equal to the fair market value of the Distributing Common Stock surrendered by Distributing Stockholder in the exchange.

(6b) Distributing and Controlled will each treat all members of its SAG as one corporation in determining whether it meets the requirements of section 355(b)(2)(A) regarding the active conduct of a trade or business.

(6c) The five years of financial information submitted on behalf of the Distributing Active Business is representative of the present operations of the Distributing Active Business and there have been no substantial operational changes since the date of the last financial statements submitted.

(6d) The five years of financial information submitted on behalf of the Controlled Active Business is representative of the present operations of the Controlled Active Business and there have been no substantial operational changes since the date of the last financial statements submitted.

(6e) Immediately after the distribution, Distributing will be the parent of a SAG that is engaged in an active trade or business under section 355(b)(3)(B).

(6f) Immediately after the distribution, Controlled will be the parent of a SAG that is engaged in an active trade or business under section 355(b)(3)(B).

(6g) Neither the Distributing Active Business nor control of an entity conducting this business will have been acquired during the Five-Year Period in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part, except in connection with transfers between members of an affiliated group within the meaning of Treas. Reg. § 1.355-3(b)(4)(iv) or in connection with the expansion of an existing five-year trade or business.

(6h) Neither the Controlled Active Business nor control of an entity conducting this business will have been acquired during the Five-Year Period in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part, except in connection with transfers between members of an affiliated group within the meaning of Treas. Reg. § 1.355-3(b)(4)(iv) or in connection with the expansion of an existing five-year trade or business.

(6i) Except for certain services to be provided under the Separation Agreements following the Distribution, Distributing and Controlled will each continue the conduct of its Active Business, independently and with its separate employees.

(6j) The Distribution is being carried out to facilitate the External Distribution to which it relates, each of which is being carried out for the Corporate Business Purposes. The Distribution is motivated, in whole or in substantial part, by one or more of the Corporate Business Purposes.

(6k) The Distribution is not used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.

(6l) The total adjusted basis and the fair market value of the assets transferred to Controlled by Distributing in the Contribution each will equal or exceed the sum of (i) the total amount of any liabilities assumed (as determined under section 357(d)) by Controlled and (ii) the total amount of any money and the fair market value of any other property (within the meaning of section 361(b)) received by Distributing and transferred to its creditors in connection with the reorganization.

(6m) Any liabilities assumed (as determined under Section 357(d)) by Controlled in the Contribution will have been incurred in the ordinary course of business and will be associated with the assets transferred.

(6n) The total fair market value of the assets transferred to Controlled in the Contribution will exceed the sum of (i) the amount of any liabilities assumed (as determined under section 357(d)) by Controlled in connection with the Contribution, (ii) the amount of any liabilities owed to Controlled by Distributing that are discharged or extinguished in connection with the Contribution, and (iii) the amount of any cash and the fair market value of any other property (other than stock and securities permitted to be received under section 361(a) without the recognition of gain) received by Distributing in connection with the Contribution. The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the Contribution.



(6o) The aggregate fair market value of the assets Distributing transfers to Controlled in the Contribution will equal or exceed the aggregate adjusted basis of these assets.

(6p) There is no plan or intention to liquidate Distributing (or any other member of the Distributing SAG engaged in the Active Trade or Business) or Controlled (or any other member of the Controlled SAG engaged in the Active Trade or Business), to merge any of these corporations with any other corporation, or to sell or otherwise dispose of the assets of any of these corporations after the Distribution, except in the ordinary course of business or as part of the Proposed Transactions.

(6q) Distributing will neither accumulate its receivables nor make extraordinary payment of its payables in anticipation of the Distribution.

(6r) No property will be transferred by Distributing to Controlled for which an investment credit allowed under section 46 has been or will be claimed.

(6s) No intercorporate debt will exist between Distributing (or any entity controlled directly or indirectly by Distributing) and Controlled (or any entity controlled directly or indirectly by Controlled) at the time of, or subsequent to, the Distribution other than any indebtedness that has arisen in the ordinary course of business or that may arise after the Distribution in connection with a Separation Agreement or an Intercompany Supply Agreement.

(6t) Immediately before the Distribution, items of income, gain, loss, deduction and credit will be taken into account as required by the applicable intercompany transaction regulations (see Treas. Reg. §§ 1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and, as currently in effect, Treas. Reg. § 1.1502-13 as published by T.D. 8597). Further, any excess loss account Distributing may have in the Controlled Common Stock or the stock of any direct or indirect subsidiary of Controlled will be included in income immediately before the Distribution to the extent required by Treasury Regulations (see Treas. Reg. § 1.1502-19). At the time of the Distribution, Distributing will not have an excess loss account in the Controlled Common Stock or the stock of any direct or indirect subsidiary of Controlled.

(6u) Any indebtedness between Distributing and Controlled after the Distribution will not constitute stock or securities.

(6v) Apart from certain payments made under the Trademark IP Agreements and the Transition Services Agreements, payments made in connection with any continuing transactions between or among Distributing 5 or any of its subsidiaries, Controlled 4 or any of its subsidiaries, and Controlled 5 or any of its

subsidiaries will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(6w) No two parties to the Distribution are investment companies as defined in sections 368(a)(2)(F)(iii) and (iv).

(6x) For purposes of section 355(d), immediately after the Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50 percent or more of the total value of all classes of Distributing stock, that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the Five-Year Period (determined after applying section 355(d)(6)).

(6y) For purposes of section 355(d), immediately after the Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50 percent or more of the total value of all classes of Controlled stock, that was either (i) acquired by purchase (as defined in section 355(d)(5) and (8)) during the Five-Year Period (determined after applying section 355(d)(6)) or (ii) attributable to distributions on Distributing stock that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the Five-Year Period (determined after applying section 355(d)(6)).

(6z) The Distribution is not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock possessing 50 percent or more of the total combined voting power of all classes of stock of Distributing or Controlled or stock possessing 50 percent or more of the total value of all classes of stock of Distributing or Controlled (including any predecessor or successor of such corporation).

(7a) Immediately following the Distribution (taking into account section 355(g)(4)), either (i) no person will hold a 50-percent or greater interest (within the meaning of section 355(g)(3)) in Distributing or Controlled, (ii) if any person holds a 50-percent or greater interest (within the meaning of section 355(g)(3)) in any disqualified investment corporation (within the meaning of section 355(g)(2)), such person will have held such interest in such corporation immediately before the transaction, or (iii) neither Distributing nor Controlled will be a disqualified investment corporation (within the meaning of section 355(g)(2)).

(7b) There is no regulatory, legal, contractual, or economic compulsion or requirement that Distributing 5 make part or all of the Distributing 5 Contribution to Distributing as a condition to the Distribution.

*Divisive Reorganization 6 and Divisive Reorganization 7*

Distributing 5 has made the following representations for Divisive Reorganization 6 and Divisive Reorganization 7:

(7c) Distributing, Controlled, and Distributing Stockholder each will pay their own expenses, if any, incurred in connection with the Distribution.

(7d) Except for the Controlled Restricted Stock that holders of Distributing Restricted Stock will receive in the same proportion as other Distributing Stockholders ("Restricted Stock Distribution"), no part of the consideration distributed in the Distribution will be received by a Distributing Stockholder as a creditor, employee, or in any capacity other than that of a stockholder of Distributing. In no event will the Restricted Stock Distribution represent more than 20 percent of the Controlled stock (restricted and unrestricted) in the Distribution.

(7e) Distributing and Controlled will each treat all members of its SAG as one corporation in determining whether it meets the requirements of section 355(b)(2)(A) regarding the active conduct of a trade or business.

(7f) The five years of financial information submitted on behalf of the Distributing Active Business is representative of the present operations of the Distributing Active Business and there have been no substantial operational changes since the date of the last financial statements submitted.

(7g) The five years of financial information submitted on behalf of the Controlled Active Business is representative of the present operations of the Controlled Active Business and there have been no substantial operational changes since the date of the last financial statements submitted.

(7h) Immediately after the distribution, Distributing will be the parent of a SAG that is engaged in an active trade or business under section 355(b)(3)(B).

(7i) Immediately after the distribution, Controlled will be the parent of a SAG that is engaged in an active trade or business under section 355(b)(3)(B).

(7j) Neither the Distributing Active Business nor control of an entity conducting this business will have been acquired during the Five-Year Period in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part, except in connection with transfers between members of an affiliated group within the meaning of Treas. Reg. § 1.355-3(b)(4)(iv) or in connection with the expansion of an existing five-year trade or business.

(7k) Neither the Controlled Active Business nor control of an entity conducting this business will have been acquired during the Five-Year Period in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part, except in connection with transfers between members of an affiliated group within the meaning of Treas. Reg. § 1.355-3(b)(4)(iv) or in connection with the expansion of an existing five-year trade or business.

(7l) Except for certain services to be provided under the Separation Agreements following the Distribution, Distributing and Controlled will each continue the conduct of its Active Business, independently and with its separate employees.

(7m) The Distribution is being carried out for the Corporate Business Purposes. The Distribution is motivated, in whole or in substantial part, by one or more of the Corporate Business Purposes.

(7n) The Distribution is not used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.

(7o) The total adjusted basis and the fair market value of the assets transferred to Controlled by Distributing in the Contribution each will equal or exceed the sum of (i) the total amount of any liabilities assumed (as determined under section 357(d)) by Controlled and (ii) the total amount of any money and the fair market value of any other property (within the meaning of section 361(b)) received by Distributing and transferred to its creditors in connection with the reorganization.

(7p) Any liabilities assumed (as determined under Section 357(d)) by Controlled in the Contribution will have been incurred in the ordinary course of business and will be associated with the assets transferred.

(7q) The total fair market value of the assets transferred to Controlled in the Contribution will exceed the sum of (i) the amount of any liabilities assumed (as determined under section 357(d)) by Controlled in connection with the Contribution, (ii) the amount of any liabilities owed to Controlled by Distributing that are discharged or extinguished in connection with the Contribution, and (iii) the amount of any cash and the fair market value of any other property (other than stock and securities permitted to be received under section 361(a) without the recognition of gain) received by Distributing in connection with the Contribution. The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the Contribution.

(7r) The aggregate fair market value of the assets Distributing transfers to Controlled in the Contribution will equal or exceed the aggregate adjusted basis of these assets.

(7s) There is no plan or intention to liquidate Distributing (or any other member of the Distributing SAG engaged in the Active Trade or Business) or Controlled (or any other member of the Controlled SAG engaged in the Active Trade or Business), to merge any of these corporations with any other corporation, or to sell or otherwise dispose of the assets of any of these corporations after the Distribution, except in the ordinary course of business or as part of the Proposed Transactions.

(7t) Distributing will neither accumulate its receivables nor make extraordinary payment of its payables in anticipation of the Distribution.

(7u) No property will be transferred by Distributing to Controlled for which an investment credit allowed under section 46 has been or will be claimed.

(7v) No intercorporate debt will exist between Distributing (or any entity controlled directly or indirectly by Distributing) and Controlled (or any entity controlled directly or indirectly by Controlled) at the time of, or subsequent to, the Distribution other than any indebtedness that has arisen in the ordinary course of business or that may arise after the Distribution in connection with a Separation Agreement or an Intercompany Supply Agreement.

(7w) Immediately before the Distribution, items of income, gain, loss, deduction and credit will be taken into account as required by the applicable intercompany transaction regulations (see Treas. Reg. §§ 1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and, as currently in effect, Treas. Reg. § 1.1502-13 as published by T.D. 8597). Further, any excess loss account Distributing may have in the Controlled Common Stock or the stock of any direct or indirect subsidiary of Controlled will be included in income immediately before the Distribution to the extent required by Treasury Regulations (see Treas. Reg. § 1.1502-19). At the time of the Distribution, Distributing will not have an excess loss account in the Controlled Common Stock or the stock of any direct or indirect subsidiary of Controlled.

(7x) Any indebtedness between Distributing and Controlled after the Distribution will not constitute stock or securities.

(7y) Apart from certain payments made under the Trademark IP Agreements and the Transition Services Agreements, payments made in connection with any continuing transactions between or among Distributing or any of its subsidiaries, Controlled or any of its subsidiaries and Other Controlled or any of its subsidiaries will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(7z) No two parties to the Distribution are investment companies as defined in sections 368(a)(2)(F)(iii) and (iv).

(8a) For purposes of section 355(d), immediately after the Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50 percent or more of the total value of all classes of Distributing stock, that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the Five-Year Period (determined after applying section 355(d)(6)).

(8b) For purposes of section 355(d), immediately after the Distribution, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50 percent or more of the total value of all classes of Controlled stock, that was either (i) acquired by purchase (as defined in section 355(d)(5) and (8)) during the Five-Year Period (determined after applying section 355(d)(6)) or (ii) attributable to distributions on Distributing stock that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the Five-Year Period (determined after applying section 355(d)(6)).

(8c) The Distribution is not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock possessing 50 percent or more of the total combined voting power of all classes of stock of Distributing or Controlled or stock possessing 50 percent or more of the total value of all classes of stock of Distributing or Controlled (including any predecessor or successor of such corporation).

(8d) Immediately following the Distribution (taking into account section 355(g)(4)), either (i) no person will hold a 50-percent or greater interest (within the meaning of section 355(g)(3)) in Distributing or Controlled, (ii) if any person holds a 50-percent or greater interest (within the meaning of section 355(g)(3)) in any disqualified investment corporation (within the meaning of section 355(g)(2)), such person will have held such interest in such corporation immediately before the transaction, or (iii) neither Distributing nor Controlled will be a disqualified investment corporation (within the meaning of section 355(g)(2)).

(8e) The Reverse Stock Split will qualify as a reorganization under section 368(a)(1)(F).

Distributing 5 has made the following additional representation for Divisive Reorganization 6 and Divisive Reorganization 7 in combination:

(8f) The Distributing debt repaid with the Controlled 5 Cash Distribution and the Controlled 4 Cash Distribution will not exceed in the aggregate the weighted quarterly average of the Distributing debt owed to third parties for the twelve-month period ending on the close of business on Date 2, the last business day

before the date on which the Distributing board of directors authorized Distributing to pursue the Distributions actively.

## RULINGS

### The Conversions

The following rulings incorporate the definitions of Parent and Subsidiary set forth in the table above.

#### *Sub 8 and Sub 34 Conversions*

Based solely on the information and representations submitted, we rule as follows on each of the Sub 8 Conversion and the Sub 34 Conversion:

- (1) The Conversion will be treated as a distribution by Subsidiary to Parent in complete liquidation under section 332(a).
- (2) No gain or loss will be recognized by Parent on the deemed receipt of the assets and liabilities of Subsidiary in the Conversion (section 332(a)).
- (3) No gain or loss will be recognized by Subsidiary on the deemed distribution of its assets and liabilities to Parent in the Conversion (section 337(a)).
- (4) The basis of each asset of Subsidiary deemed received by Parent in the Conversion will equal the basis of that asset in the hands of Subsidiary immediately before the Conversion (section 334(b)(1)).
- (5) The holding period of each asset of Subsidiary deemed received by Parent in the Conversion will include the period during which Subsidiary held the asset (section 1223(2)).
- (6) Parent will succeed to and take into account the items of Subsidiary described in section 381(c), subject to the conditions and limitations specified in section 381, section 382, section 383, section 384, section 1502, and the Treasury Regulations thereunder (section 381(a)(1) and Treas. Reg. § 1.381(a)-1).
- (7) Except to the extent Subsidiary's earnings and profits are reflected in Parent's earnings and profits, Parent will succeed to and take into account the earnings and profits, or deficit in earnings and profits, of Subsidiary as of the date of the Conversion (section 381(c)(2)(A) and Treas. Reg. §§ 1.381(c)(2)-1 and 1.1502-33(a)(2)). Any deficit in the earnings and profits of Subsidiary will be used only to offset earnings and profits accumulated after the date of the Conversion (section 381(c)(2)(B)).

### *The Sub 3 Conversion*

Based solely on the information and representations submitted, we rule as follows on the Sub 3 Conversion:

- (8) No gain or loss will be recognized by Distributing 5 on its deemed receipt of Sub 3 assets and deemed assumption of Sub 3 liabilities in the Sub 3 Conversion.
- (9) No gain or loss will be recognized by Sub 3 on the deemed distribution of its assets to Distributing 5, and deemed assumption of its liabilities by Distributing 5, in the Sub 3 Conversion.
- (10) The basis of each asset of Sub 3 deemed received by Distributing 5 in the Sub 3 Conversion will equal the basis of that asset in the hands of Sub 3 immediately before the Sub 3 Conversion.
- (11) The holding period of each asset of Sub 3 deemed received by Distributing 5 in the Sub 3 Conversion will include the period during which Sub 3 held the asset (section 1223(2)).
- (12) Distributing 5 will succeed to and take into account the items of Sub 3 described in section 381(c), subject to the conditions and limitations specified in section 381, section 382, section 383, section 384, section 1502, and the Treasury Regulations thereunder (section 381(a) and Treas. Reg. § 1.381(a)-1).
- (13) Except to the extent the earnings and profits of Sub 3 are reflected in Distributing 5's earnings and profits, Distributing 5 will succeed to and take into account the earnings and profits, or deficit in earnings and profits, of Sub 3 as of the date of the Sub 3 Conversion (section 381(c)(2)(A) and Treas. Reg. §§ 1.381(c)(2)-1 and 1.1502-33(a)(2)). Any deficit in the earnings and profits of Sub 3 will be used only to offset earnings and profits accumulated after the date of the Sub 3 Conversion (section 381(c)(2)(B)).

### The Contributions and Distributions

The following rulings incorporate the definitions of Distributing, Distributing Stockholder, Controlled, and Contribution set forth in the table above. In addition, "Other Controlled" means (i) Controlled 1 or Controlled 2, as applicable, in the case the of the Divisive Reorganization 1, Divisive Reorganization 2, Distribution 1, and Distribution 2 and (ii) Controlled 5 or Controlled 4, as applicable, in the case of the External Distributions.

### *Divisive Reorganization 1 and Divisive Reorganization 2*



Based solely on the information and representations submitted, we rule as follows on each of Divisive Reorganization 1 and Divisive Reorganization 2:

(14) The Contribution and Distribution together will qualify as a “reorganization” within the meaning of section 368(a)(1)(D). Distributing and Controlled each will be “a party to a reorganization” within the meaning of section 368(b).

(15) Distributing will not recognize gain or loss in the Contribution (sections 361(a) and 357(a)).

(16) Controlled will not recognize gain or loss in the Contribution (section 1032(a)).

(17) Controlled’s basis in each asset received from Distributing in the Contribution will equal the basis of that asset in the hands of Distributing immediately before its transfer to Controlled (section 362(b)).

(18) Controlled’s holding period for each asset received from Distributing will include the period during which Distributing held (or was deemed to hold) that asset (section 1223(2)).

(19) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) Distributing Stockholder upon its receipt of Controlled CPECs and Controlled Common Stock in the Distribution (section 355(a)(1)).

(20) No gain or loss will be recognized by Distributing upon its distribution of Controlled CPECs and Controlled Common Stock in the Distribution (section 361(c)).

(21) The aggregate basis of the Controlled CPECs and Controlled Common Stock exchanged for Distributing CPECs or Distributing Common Stock in the hands of Distributing Stockholder will equal Distributing Stockholder’s adjusted basis in the Distributing CPECs or Distributing Common Stock, as applicable, surrendered in the Distribution (section 358(a)(1) and (b) and Treas. Reg. § 1.358-2(a)(2)).

(22) To the extent the Controlled CPECs and Controlled Common Stock are not exchanged for Distributing CPECs or Distributing Common Stock, and the Distribution is instead made with respect to Distributing Common Stock, the aggregate basis of the Controlled CPECs, Controlled Common Stock, Other Controlled CPECs, Other Controlled Common Stock, and Distributing Common Stock in the hands of Distributing Stockholder will equal the Distributing Stockholder’s adjusted basis in the Distributing Common Stock with respect to which the Distribution is made, allocated in proportion to the fair market values of the Controlled CPECs, Controlled Common Stock, Other Controlled CPECs,

Other Controlled Common Stock, and Distributing Common Stock (section 358(a)(1) and (b) and Treas. Reg. § 1.358-2(a)(2)).

(23) The holding period of the Controlled CPECs and Controlled Common Stock received by Distributing Stockholder in the Distribution will include in each case the holding period of the Distributing CPECs and Controlled Common Stock exchanged therefor, or with respect to which the Distribution is made, provided the Distributing CPECs and Distributing Common Stock are held as capital assets on the date of the Distribution (section 1223(1)).

(24) As provided in section 312(h), proper allocation of earnings and profits among Distributing, Controlled, and Other Controlled will be made under Treas. Reg. § 1.312-10(a) and (c).

(25) The Contribution will be an exchange to which Treas. Reg. §§ 1.367(b)-1(c) and 1.367(b)-4(a) apply. No amount will be included in income as a deemed dividend equal to the section 1248 amount under section 367(b) as a result of the Contribution.

(26) The Distribution will be an exchange to which Treas. Reg. §§ 1.367(b)-1(c), 1.367(b)-5(a), and 1.367(b)-5(c) apply. If Distributing Stockholder's postdistribution amount (as defined in Treas. Reg. § 1.367(b)-5(e)(2)) with respect to Distributing or Controlled is less than its predistribution amount (as defined in Treas. Reg. § 1.367(b)-5(e)(1)) with respect to Distributing or Controlled, Distributing Stockholder's basis in its Controlled equity interests and Distributing equity interests immediately after the distribution must be reduced by the amount of the difference. However, Distributing Stockholder's basis in such equity interests must not be reduced below zero, and to the extent the foregoing reduction would reduce its basis below zero, Distributing Stockholder must instead include such amount in income as a deemed dividend from such corporation. If Distributing Stockholder reduces its basis in the equity interests of Distributing or Controlled (or has an inclusion with respect to such equity interests), Distributing Stockholder must increase its basis in the equity interests of the other corporation to the extent provided in Treas. Reg. § 1.367(b)-5(c)(4).

#### *Distribution 1 and Distribution 2*

Based solely on the information and representations submitted, we rule as follows on each of Distribution 1 and Distribution 2:

(27) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) Distributing Stockholder upon its receipt of Controlled CPECs and Controlled Common Stock in the Distribution (section 355(a)(1)).

(28) No gain or loss will be recognized by Distributing upon its distribution of Controlled CPECs and Controlled Common Stock in the Distribution (section 355(c)).

(29) The aggregate basis of the Controlled CPECs and Controlled Common Stock exchanged for Distributing CPECs or Distributing Common Stock in the hands of Distributing Stockholder will equal Distributing Stockholder's adjusted basis in the Distributing CPECs or Distributing Common Stock, as applicable, surrendered in the Distribution (section 358(a)(1) and (b) and Treas. Reg. § 1.358-2(a)(2)).

(30) To the extent the Controlled CPECs and Controlled Common Stock are not exchanged for Distributing CPECs or Distributing Common Stock, and the Distribution is instead made with respect to Distributing Common Stock, the aggregate basis of the Controlled CPECs, Controlled Common Stock, Other Controlled CPECs, Other Controlled Common Stock, and Distributing Common Stock in the hands of Distributing Stockholder will equal the Distributing Stockholder's adjusted basis in the Distributing Common Stock with respect to which the Distribution is made, allocated in proportion to the fair market values of the Controlled CPECs, Controlled Common Stock, Other Controlled CPECs, Other Controlled Common Stock, and Distributing Common Stock (section 358(a)(1) and (b) and Treas. Reg. § 1.358-2(a)(2)).

(31) The holding period of the Controlled CPECs and Controlled Common Stock received by Distributing Stockholder in the Distribution will include the holding period of the Distributing CPECs and Controlled Common Stock exchanged therefor, or with respect to which the Distribution is made, provided the Distributing CPECs and Distributing Common Stock are held as capital assets on the date of the Distribution (section 1223(1)).

(32) As provided in section 312(h), proper allocation of earnings and profits among Distributing, Controlled, and Other Controlled will be made under Treas. Reg. §§ 1.312-10(b) and (c).

(33) The Distribution will be an exchange to which Treas. Reg. §§ 1.367(b)-1(c), 1.367(b)-5(a), and 1.367(b)-5(c) apply. If Distributing Stockholder's postdistribution amount (as defined in Treas. Reg. § 1.367(b)-5(e)(2)) with respect to Distributing or Controlled is less than its predistribution amount (as defined in Treas. Reg. § 1.367(b)-5(e)(1)) with respect to Distributing or Controlled, Distributing Stockholder's basis in its Controlled equity interests and Distributing equity interests immediately after the distribution must be reduced by the amount of the difference. However, Distributing Stockholder's basis in such equity interests must not be reduced below zero, and to the extent the foregoing reduction would reduce its basis below zero, Distributing Stockholder must instead include such amount in income as a deemed dividend from such

corporation. If Distributing Stockholder reduces its basis in the equity interests of Distributing or Controlled (or has an inclusion with respect to such equity interests), Distributing Stockholder must increase its basis in the equity interests of the other corporation to the extent provided in Treas. Reg. § 1.367(b)-5(c)(4).

*Divisive Reorganization 3 and Divisive Reorganization 5*

Based solely on the information and representations submitted, we rule as follows on each of Divisive Reorganization 3 and Divisive Reorganization 5:

(34) The Contribution and the Distribution together will qualify as a “reorganization” within the meaning of section 368(a)(1)(D). Distributing and Controlled will each be “a party to a reorganization” within the meaning of section 368(b).

(35) Distributing will not recognize gain or loss in the Contribution (sections 361(a) and 357(a)).

(36) Controlled will not recognize gain or loss in the Contribution (section 1032(a)).

(37) Controlled’s basis in each asset received from Distributing in the Contribution will equal the basis of that asset in the hands of Distributing immediately before its transfer to Controlled (section 362(b)).

(38) Controlled’s holding period for each asset received from Distributing will include the period during which Distributing held (or was deemed to hold) that asset (section 1223(2)).

(39) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) Distributing Stockholder upon its receipt of Controlled Common Stock in the Distribution (section 355(a)(1)).

(40) No gain or loss will be recognized by Distributing upon its distribution of Controlled Common Stock in the Distribution (section 361(c)).

(41) The aggregate basis of the Controlled Common Stock and Distributing Common Stock in the hands of Distributing Stockholder will equal Distributing Stockholder’s basis in the Distributing Common Stock immediately before the Distribution, allocated in proportion to the fair market values of the Controlled Common Stock and Distributing Common Stock (section 358(a)(1) and (b) and Treas. Reg. § 1.358-2(a)(2)).

(42) The holding period of the Controlled Common Stock received by Distributing Stockholder in the Distribution will include the holding period of the Distributing Common Stock with respect to which the Distribution is made,

provided the Distributing stock is held as a capital asset on the date of the Distribution (section 1223(1)).

(43) Earnings and profits will be allocated between Distributing and Controlled in accordance with section 312(h) and Treas. Reg. §§ 1.312-10(a) and 1.1502-33(f)(2).

#### *Divisive Reorganization 4*

Based solely on the information and representations submitted, we rule as follows on Divisive Reorganization 4:

(44) The Contribution and Distribution together will qualify as a “reorganization” within the meaning of section 368(a)(1)(D). Distributing and Controlled will each be “a party to a reorganization” within the meaning of section 368(b).

(45) The Distributing 5 Contribution will not be treated as having been received by Distributing in exchange for Controlled Common Stock distributed by Distributing in the Distribution.

(46) Distributing will not recognize gain or loss in the Contribution (sections 361(a) and 357(a)).

(47) Controlled will not recognize gain or loss in the Contribution (section 1032(a)).

(48) Controlled’s basis in each asset received from Distributing in the Contribution will equal the basis of that asset in the hands of Distributing immediately before its transfer to Controlled (section 362(b)).

(49) Controlled’s holding period for each asset received from Distributing will include the period during which Distributing held (or was deemed to hold) that asset (section 1223(2)).

(50) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) Distributing Stockholder upon its receipt of Controlled Common Stock in the Distribution (section 355(a)(1)).

(51) No gain or loss will be recognized by Distributing upon its distribution of Controlled Common Stock in the Distribution (section 361(c)).

(52) The aggregate basis of the Controlled Common Stock in the hands of Distributing Stockholder will equal Distributing Stockholder’s adjusted basis in Distributing Common Stock surrendered in the Distribution (section 358(a)(1) and (b) and Treas. Reg. § 1.358-2(a)(2)).

(53) The holding period of the Controlled Common Stock received by Distributing Stockholder in the Distribution will include the holding period of the Distributing Common Stock exchanged therefor, provided the Distributing Common Stock is held as a capital asset on the date of the Distribution (section 1223(1)).

(54) Earnings and profits will be allocated between Distributing and Controlled in accordance with section 312(h) and Treas. Reg. §§ 1.312-10(a) and 1.1502-33(f)(2).

(55) The contribution by Distributing Stockholder of its p-percent share of the Controlled Common Stock to Distributing in the Distributing 5 Contribution will be disregarded for Federal income tax purposes and treated as if Distributing Stockholder had retained the p-percent share of the Controlled Common Stock (see Rev. Rul. 63-260, 1963-2 C.B. 14).

*Divisive Reorganization 6 and Divisive Reorganization 7*

Based solely on the information and representations submitted, we rule as follows on each of Divisive Reorganization 6 and Divisive Reorganization 7:

(56) The Contribution and the Distribution together will qualify as a “reorganization” within the meaning of section 368(a)(1)(D). Distributing and Controlled will each be “a party to a reorganization” within the meaning of section 368(b).

(57) Distributing will not recognize gain or loss in the Contribution (sections 361(a), 361(b)(3), and 357(a)).

(58) Controlled will not recognize gain or loss in the Contribution (section 1032(a)).

(59) Controlled’s basis in each asset received from Distributing in the Contribution will equal the basis of that asset in the hands of Distributing immediately before its transfer to Controlled (section 362(b)).

(60) Controlled’s holding period for each asset received from Distributing will include the period during which Distributing held (or was deemed to hold) that asset (section 1223(2)).

(61) Provided that Controlled is a member of Distributing’s DSAG within the meaning of Treas. Reg. § 1.355-2T(g)(3) after the issuance of Controlled Common Stock by Controlled to Distributing in exchange for the IP Agreements, (1) no gain or loss will be recognized by (and no amount will otherwise be included in the income of) a Distributing Stockholder upon its receipt of

Controlled Common Stock in the Distribution (section 355(a)(1)), and (2) section 355(a)(3)(B) will not treat as “other property” any part of the Controlled Common Stock issued by Controlled to Distributing in exchange for the IP Agreements.

(62) No gain or loss will be recognized by Distributing upon its distribution of Controlled Common Stock in the Distribution (section 361(c)).

(63) Each Distributing Stockholder’s basis in a share of Distributing Common Stock (as adjusted under Treas. Reg. § 1.358-1) with respect to which the External Distributions are made shall be allocated among that share of Distributing Common Stock and the shares of Controlled Common Stock and Other Controlled Common Stock received with respect to that share of Distributing Common Stock in proportion to the fair market values of each. If a Distributing Stockholder that purchased or acquired shares of Distributing Common Stock on different dates or at different prices is not able to identify which particular share of Controlled Common Stock or Other Controlled Common Stock (or portion thereof) is received with respect to a particular share of Distributing Common Stock (or portion thereof), the Distributing Stockholder may designate which share of Controlled Common Stock or Other Controlled Common Stock is received with respect to a particular share of Distributing Common Stock, provided the terms of the designation are consistent with the terms of the External Distributions (Treas. Reg. § 1.358-2(a)(2)(vii)).

(64) The holding period of the Controlled Common Stock received by a Distributing Stockholder in the Distribution will include the holding period of the Distributing Common Stock with respect to which the Distribution will be made, provided the Distributing Common Stock is held as a capital asset on the date of the Distribution (section 1223(1)).

(65) Earnings and profits will be allocated among Distributing, Controlled, and Other Controlled in accordance with section 312(h) and Treas. Reg. §§ 1.312-10(a) and 1.1502-33(e)(3).

(66) The receipt by Distributing Stockholders of cash in lieu of fractional shares of Controlled Common Stock will be treated for Federal income tax purposes as if the fractional shares had been distributed to the Distributing Stockholders as part of the Distribution and then had been disposed of by such stockholders for the amount of such cash in a sale or exchange. The gain (or loss), if any (determined using the basis allocated to the fractional shares in ruling (63) and the holding period attributed to the fractional shares in ruling (64)) will be treated as a capital gain (or loss), provided the stock was held as a capital asset by the selling stockholder (section 1001).

(67) Following the Distribution, Controlled will not be a successor of Distributing for purposes of section 1504(a)(3). Therefore, Controlled and its direct and



indirect subsidiaries that are “includable corporations” under section 1504(b) and satisfy the ownership requirements of section 1504(a)(2) will be members of an affiliated group of corporations entitled to file a consolidated Federal income tax return with Controlled as the common parent.

(68) Except for purposes of section 355(g), payments made between Distributing, Controlled, or Other Controlled as a result of Post-Closing Cash Adjustments, the General Indemnification Agreements, or the Tax Indemnification Provisions that (i) have arisen or will arise for a taxable period ending on or before the Distribution or for a taxable period beginning before and ending after the Distribution and (ii) will not become fixed and ascertainable until after the Distribution, will be treated as occurring during the taxable period(s) beginning before the Distribution in which they arose (*cf. Arrowsmith v. Commissioner*, 344 U.S. 6 (1952) (tax character of later transaction will derive from earlier, related transaction); Rev. Rul. 83-73, 1983-1 C.B. 84).

### CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, this office has not reviewed any information pertaining to and has made no determination regarding:

- (i) Whether any Distribution will satisfy the business purpose requirement of Treas. Reg. § 1.355-2(b);
- (ii) Whether any Distribution will be used principally as a device for the distribution of earnings and profits of the distributing corporation or the controlled corporation or both;
- (iii) Whether any Distribution and an acquisition or acquisitions are part of a plan (or series of related transactions) under section 355(e)(2)(A)(ii);
- (iv) The Federal income tax treatment of any payment made under the Trademark IP Agreements or the Transition Services Agreements that is not for fair market value based on terms and conditions arrived at by the parties bargaining at arm’s length;
- (v) The Federal income tax treatment of (a) steps in the Distributing 3 Foreign Restructuring that precede step (iii) of the Proposed Transactions and (b) any other restructuring activity not specifically described in the Proposed Transactions;
- (vi) Whether the Reverse Stock Split will qualify as a reorganization under section 368(a)(1)(F);



(vii) The adjustments to earnings and profits or deficits in earnings and profits, if any, in any of the transactions to which section 367 applies (to the extent not otherwise specifically ruled upon above); and

(viii) To the extent not otherwise specifically ruled upon above, any other consequences under section 367 with respect to any transaction described in this letter ruling.

### PROCEDURAL STATEMENTS

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Final regulations pertaining to one or more of the issues addressed in this ruling have not yet been adopted. Therefore, this ruling will be modified or revoked by the adoption of temporary or final regulations, to the extent the regulations are inconsistent with any conclusion in the letter ruling. See section 11.04 of Rev. Proc. 2011-1, 2011-1 I.R.B. 1. However, when the criteria in section 11.06 of Rev. Proc. 2011-1 are satisfied, a ruling is not revoked or modified retroactively except in rare or unusual circumstances.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, any taxpayer filing its return electronically may satisfy this requirement by attaching a statement to the return that provides the date and control number of this letter.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to each of your authorized representatives.

Sincerely,

Gerald B. Fleming  
Senior Technician Reviewer, Branch 2  
(Corporate)